

Unreasonable Seizures on the Interstate

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On Thursday afternoon, January 2, 2014, traffic began backing up unexpectedly on I-95 Northbound heading out of Miami. Police had blocked off all lanes as well as the ramp leading from the 836, Miami's Dolphin Expressway. Is it the President? A terrible accident? Are we in some sort of danger? Nope. It's just the Ohio State football team heading to practice.

How can we know it was the OSU football bus? Good question, because it could have been a decoy bus. Hard to tell. The bus-sized Ohio State logos and Orange Bowl logos may have been a clever trick to distract the hordes of zombies that otherwise plague those of us traveling along Miami's interstates whilst the real OSU team was smuggled in in a more discrete manner. It was hard to otherwise get a good look at the bus. No less than eight police motorcycles and SUVs, red and blue lights flashing, maintained a perimeter around the bus as it traveled along the express lanes. And they were kind of flying; let's just say that if I were going as fast as they were and saw red and blue lights flashing all around me, I would be having a bad day.

Similar escorts are also [in place for the Clemson Tigers](#), as they are for all Orange Bowl contenders. For last year's contest, [fourteen police officers wearing Northern Illinois helmets](#) escorted the NIU Huskies to and from practice. Among the benefits of a police escort is that you need not worry about things such as traffic lights or speed limits; you need not even worry about traffic lanes, as police can simply force less important people [off the road into the median, or perhaps even onto the sidewalk](#) to allow you to pass unrestricted.

Unfortunately, such treatment for college and professional athletes has become routine. Author and ESPN contributor Gregg Easterbrook has repeatedly questioned why collegiate athletes are treated [as if they were visiting heads of state](#):

Indeed, it is common for college and NFL teams to travel accompanied by phalanxes of police officers who stop traffic at intersections, or use sirens so the football buses can roar past. Sometimes police even accompany the buses of football-game announcers, using sirens to move them through blocked traffic. Why should even one penny of taxpayer money be spent on police for the convenience of football teams or

announcers? Why should average people stuck in traffic be inconvenienced so football players and announcers can be treated like aristocrats?

Perhaps one of these officers is excessive

In 2010, Bluefield Daily Telegraph sports columnist Brian Woodson reported his experience on a bus with [four reporters and one other passenger being escorted to the Orange Bowl](#):

With just five of us on a large bus, our driver decided to quit waiting and take us to Dan Marino Boulevard. Instead, he was stopped by one of Fort Lauderdale's policeman.

No ticket, he told our driver to follow him.

Did we ever.

It was an amazing sight to watch. I've been fortunate never to create a need for a police chase, but two police cars drove in front and to the side of our bus, sirens blaring, and lights flashing, leaving all the other drivers out there wondering who the celebrities were on that bus. . . .

It was crazy watching the two squad cars alternate positions, dipping in and out of traffic — much like Jimmie Johnson or the late-Dale Earnhardt — and leading us right to our destination.

My girlfriend called while it was taking place, and she couldn't believe it. Me either, but it sure was nice to live every traveler's dream.

It was our bus getting this treatment. As we were driving at high speeds — at least for a bus — the police blocked other drivers' path, weaved in and out of traffic, leaving us to keep driving, almost like Sandra Bullock in the movie "Speed" many years ago.

Only there was no bomb aboard, although I was able to witness a second half explosion by Virginia Tech.

That allowed free space ahead for our bus, and our driver took advantage, getting us to the stadium in record time.

Even he joked that Obama — who was in Miami the previous year — hadn't received that type of service.

It is offensive to think that taxpayer money is inevitably being used to fund such excess against no readily ascertainable threat. But as a newly-minted lawyer, I am more troubled by the use of state power in such a manner. That is, state officers, blessed with plenary state powers, and using all of the symbols of that authority (uniforms, police vehicles, guns, badges, etc.) used that power to hold all of us regular citizens back. I could imagine that if I defied the police roadblock, even traveling at a reasonable 55 MPH, I would see red and blue lights flashing all around me and start having a really bad day.

When the police tell you to stop, by golly, you'd do best to stop. There is a word for the opposite: flight. On foot, "headlong flight"—running when the police tell you to stop—is considered "the consummate act of evasion."¹ [1. [Illinois v. Wardlow](#), 528 U.S. 119, 124 (2000).] Vehicular flight is even worse. In a vehicle, defying an officer's authority "is a provocative and dangerous act that dares, and in a typical case requires, the officer to give chase."² [2. [Sykes v. United States](#), 131 S.Ct. 2267, 2273 (2011).] So when an officer in uniform stops his vehicle in front of traffic and holds his hands up warning traffic to stop, everyone on the road is obligated to obey.

The question, then, is: where the police derive their authority to stop me? The police do have broad authority to stop you while traveling in your vehicle. However, as an American, you are guaranteed the right to be secure in your person against unreasonable seizures. And any "detention of individuals during the stop of an automobile by the police, even if only for a brief and limited purpose, constitutes a 'seizure' of 'persons'" within the Fourth Amendment³ [3. [Whren v. United States](#), 517 U.S. 806, 809–10 (1996).](one of the best Amendments in my opinion). The police have the right to stop you as long as they have "probable cause to believe that a traffic violation has occurred."⁴ [4. *Id.* at 810.] Anything less would be unreasonable. But the police were not making vehicular stops based on traffic violations. The temporary detentions of the drivers were made to allow a bus to pass by.

The police certainly have the power to create roadblocks. Unfortunately, Florida residents lack this power. Under Fla. Stat. § 861.01, highway obstruction is a first degree misdemeanor. Therefore, police must use powers granted to them by the state to block traffic. Certainly there is a line that can be crossed as to when the police abuse that power. For example, just a few months ago, a Miami-Dade police officer was "disciplined"⁵ [5. If "informal counseling" can be considered discipline.] [for using a police vehicle to block traffic and travel on the wrong side of the street in order to get LeBron James to the Justin Timberlake/Jay-Z concert.](#)

In Florida, the police have a statutory right to have the right-of-way during funeral processions,⁶ [6. See [Fla. Stat. § 316.1974](#)] but no such statutory power exists to grant the

police authority to block traffic and ignore traffic laws to transport celebrities and pseudo-celebrities. A year before King James was being chauffeured using state power,⁷ [7. Nothing in this post is meant to demean LeBron James. Please stay in Miami forever, LeBron.] [Washington D.C. police came under fire for using law enforcement resources to escort Charlie Sheen](#). The ensuing investigation revealed that similar escorts had been used to afford preferential standards to [Bill Gates, Christina Aguilera, Billy Joel, Paul McCartney, Justin Timberlake, and Jay-Z](#).⁸ [8. This may have been where LeBron got the idea.] The Washington D.C. police acted promptly, [demoting the police captain who reported the shenanigans to the city council](#). Sadly, in the case of James and Sheen, the stories only came out because they were bragging on social media.⁹ [9. [@charliesheen](#) tweeted, ““In car with Police escort in front and rear! driving like someone’s about to deliver a baby! Cop car lights #Spinning!” LeBron posted [this video](#) on his Instagram page, [kingjames#](#)]

The question then remains: does a temporary roadblock, not in place to check for unlawful activity, constitute a seizure under the law? The Supreme Court, in another case emanating from South Florida, held that

in order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter¹⁰ [10. [Florida v. Bostick](#), 501 U.S. 429, 439 (1991).]

Would you deny this football team passage?

A roadblock certainly fits this description. Even if the blockage is merely caused by an officer directing traffic to stop, the persons otherwise traveling on the highway were “stopped by the very instrumentality set in motion or put in place to achieve that result.”¹¹ [11. [Brower v. Cnty. Of Inyo](#), 489 U.S. 593, 599 (1989).] Because such interruption to one’s freedom of movement was caused by a show of authority designed to interrupt freedom of movement, a seizure can be said to have occurred.¹² [12. The Fourth Amendment is difficult to pin down. What is not a seizure today may be tomorrow.]

Assuming, arguendo, that one can make the case that such use of police power constitutes a seizure, a court would have to determine if that seizure was reasonable or unreasonable. If

such a seizure can be deemed unreasonable, a violation of Constitutional proportions has occurred.

Reasonableness is an objective standard, so the court must “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.”¹³ [13. [Tennessee v. Garner](#), 471 U.S. 1, 8 (1985) (quoting *United States v. Place*, 462 U.S. 696, 703 (1983)).] The argument that would theoretically thwart any Section 1983 lawsuit is that the intrusion is de minimis. Travelers on the highway were only briefly detained, and there were no personal police encounters or subsequent searches.

But does the Fourth Amendment protect against seizures that occur only in the fourth dimension? Is an intrusion on freedom of movement entirely permissible if it only causes confusion, delay, and irritation? Football teams could not charge South Floridians money to allow them to pass, but the power of the state can be invoked to freely take of our time. Time that could be spent with family, friends, and loved ones. Time spent working, looking for work, or, if you are lucky, time accumulating on the clock. Time that could be spent resting, cooking, cleaning, playing, exercising, reflecting, praying, reading, writing, and blarging. I was only delayed a minute or two, but as traffic backed up, the cumulative time of the drivers and passengers piled up into hours, days, months of lost productivity.

As to the importance of government interests, why do the Buckeyes and Tigers get to flaunt the wonderful traffic laws of the great state of Florida while Floridians are detained against their will, possibly without good A/C systems in their vehicles? Security purposes? C’mon.

Sure, [Floridians may be a little off](#), but we’re not that bad; sometimes we even work together to help visiting football teams.

The government interest here appears to be little more than promotional, which is of questionable importance when dealing in Constitutional protections.

At the heart of the Fourth Amendment is the intangible “right to be let alone”¹⁴ [14. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890) (quoting THOMAS M. COOLEY, *COOLEY ON TORTS* 29 (2d ed. 1888)).]—“the most comprehensive of rights and the right most valued by civilized men.”¹⁵ [15. [Olmstead v. United States](#), 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).] When driving in Miami and following all applicable driving regulations,¹⁶ [16. It could happen!] one should be free to move about as he or she pleases without police interference. Stopping traffic to give celebrities and athletes the right-of-

way is nothing less than a deprivation of liberty by means of a show of authority. Regardless of how much the state values my time,¹⁷ [17. As of January 1, 2014, at least at \$7.93/hr.] the state and those state actors acting under the law (or under color of law) are not free to take of it unreasonably.

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